

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4719 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JAVED ANVAR SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

MR SUNIL C PATEL for Petitioner

MR MA BUKHARI, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/12/1999

ORAL JUDGEMENT

1. The Commissioner of Police, Surat City, Surat passed an order of detention on 31-3-1999 in respect of the petitioner in exercise of powers under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act

(for short PASA Act).

2. In the grounds of detention the Authority took into consideration a prohibition case registered against the petitioner besides statements of two anonymous witnesses. The Authority exercised powers under Section 9(2) of the PASA Act and did not disclose the identity of these witnesses on the ground that the witnesses genuinely suffered from apprehension qua the petitioner in respect of person and property of the witnesses and therefore it was in public interest to exercise these powers.

The Detaining Authority after considering the possibility of resorting to less drastic alternative remedy came to the conclusion that the detention under PASA Act has to be resorted to in order to immediately prevent the petitioner from pursuing his antisocial activities which are detrimental to public order.

4. The petitioner detenu challenges the order of detention on various grounds.

5. Mr. S.C. Patel, learned advocate appearing for the petitioner has restricted his arguments to the fact that there was improper exercise of powers under Section 9(2) of the Act. To substantiate his arguments he submitted that the statements of anonymous witnesses were recorded on 27th and 28th of March 1999. The said statements were verified on 30th March, 1999 and the order was passed on 31st March, 1999. He submitted that therefore there was no sufficient time with the Detaining Authority to arrive at a genuine subjective satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act. He has pressed into service the decision in the case of Kalidas C. Kahar v. State of Gujarat 1993(2) GLR 1659. He submitted that the respondents have not filed any affidavit in reply to indicate how the subjective satisfaction was arrived at, when the papers were received, when they were perused and when the order was passed. In this view of the matter, he submitted, that the petition may be allowed.

6. Mr. Bukhari, learned AGP appearing for the respondents submitted that so far as the dates of recording statements, verification of the statements and the order are concerned, they are correctly reflected by the petitioner. He submitted that quickness on the part of the Detaining Authority may not be taken as non application of mind.

7. Considering the facts of the present case, and the facts in the case of K.C. Kahar (supra) are considered, they appear to be quite similar. In the instant case, verification of statements of anonymous witnesses was done on 30-3-1999 and the order was passed by the Detaining Authority on 31-3-1999. In the case of K.C. Kahar, the verification was done on 16th October, 1992 and the order was passed on 17th October, 1992. The Court held that there was no sufficient time lag between the verification and the passing of order, which could have enabled the detaining authority to arrive at a subjective satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act. The exercise of powers under Section 9(2) of the PASA Act calls for undertaking an exercise which would substantiate the authority that the facts stated in the statements and the fear expressed by the witnesses are genuine and that public interest requires that their identity be not disclosed. This exercise would require time and if there is no time lag between the verification and passing of the order it would affect the decision taken by the Detaining Authority for the need for exercise of powers under Section 9(2) of the PASA Act. This would adversely affect the right of the detenu of making an effective representation.

8. The petition therefore deserves to be allowed and same is hereby allowed. The petitioner/detenu Javed Anvar Shaikh of Saiyadvada, Opp. Kale Bava Apartment, Surat be set at liberty forthwith if not required in any other case. Rule is made absolute. No costs.

(A.L. Dave, J)